IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 521 of 2005

Between:

Andhra Pradesh Housing Board Colony Development and Welfare Association, Proddatur, Kadapah District, Rep. by its Secretary, P.Siva Shekar Reddy

..... PETITIONER

AND

1 The Vice-Chairman and Housing Commissioner, Andhra Pradesh Housing Board, Gruhakalpa, Nampally, Hyderabad.
2 The Executive Engineer (Housing), Andhra Pradesh Housing Board, Kurnool Division, Kurnool.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or direction or writ under Art.226 of the Constitution of India, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents Nos.1 and 2 in issuing paper Notification dt. 6-1-2005 published in Vartha Daily Telugu News Paper dt. 7-1-2005 proposing to sell the plots from the area ear-marked for open space in the petitioner -Association colony as bad, arbitrary, illegal and against the Principles of Natural Justice and consequently declare the Notification dt. 6-1-2005 of respondents in so far as it concerns with Andhra Pradesh Housing Board Colony Proddatur as null and void and illegal and pass such other orders.

Counsel for the Petitioner: SMT.P.RAJANI REDDY
Counsel for the Respondents: MR.J.PRABHAKAR

The Court made the following Oral Order: (per Sri Devinder Gupta, CJ)

This writ petition is filed as "Public Interest Litigation" by the A.P. Housing Board Colony Development and Welfare Association, Proddatur (hereinafter referred to as "the Association"). In the writ petition, it is questioning the action of the respondent-Board in having issued notification dated 6.1.2005 published in Wartha Telugu newspaper on 7.1.2005 proposing to sell certain plots which according to the Association were earlier ear-marked for open space in the petitioner-association colony, as bad, arbitrary and against the principles of natural justice and consequently it seeks a declaration that Respondents have no right or authority to convert the open spaces into plots and sell those plots.

The case of the Association is that it acquired 56.16 acres of land in Survey Nos.652, 658,668A and B, 669 and 741 in Proddatur town for construction of houses for individuals under "Integrated Housing Scheme". The respondent-Board divided the land into four types of plots leaving place for open spaces and roads for public utility and prepared the lay out plan which was approved in the year 1981. The respondent-Board sold some of the plots and in some other plots, it constructed houses and sold them to individuals and still about 15.00 acres of land is left over. It is stated that such people who have purchased the plots have constructed houses and formed into an Association in the year 2001 and got it registered under the A.P. Societies Registration Act 35 of 2001. Now, the grievance of the Association is that in order to have financial gains, the respondent-Board is trying to convert the open spaces into commercial sites thereby reducing the open spaces, which action of the respondent-Board is illegal, arbitrary and without jurisdiction.

Learned counsel for the petitioner places reliance upon the decision of the Supreme Court in BANGALORE MEDICAL TRUST vs. B.S. MUDDAPPA & OTHERS (), wherein the Supreme Court held that open space reserved for public parks in its scheme duly approved and published under the relevant provisions of law cannot be converted into a civic amenity site for the purpose of hospital/nursing home and allotted to a private person or body of persons for that purpose. In the said case, there was unilateral decision taken by the Chairman of the Development Authority at the instance of the Chief Minister of the State to convert an open space reserved

under the scheme for public park into a civic amenity site for construction of a hospital/nursing home and to allot the site to a private person or body of persons. It was held in the said case that whenever there is alteration in the use for which an area is ear marked, the authority has to take a decision by following the procedure prescribed under the relevant Act.

Opposing the writ petition, reply affidavit has been filed by the Executive Engineer, Housing, A.P. Housing Board, Kurnool Division. It is stated that after the land was acquired, initially in the year 1981, the Board prepared a lay out, namely, L.P. No.340/81 and got it approved. This lay out was not acted upon and was revised. Thereafter, second lay out was prepared and it was approved by the Director of Towns and Country Planning in the year 1995 as L.P. No. 16/1995. This lay out revised the earlier lay out L.P. No. 340/81. The second lay out was prepared in order to have a continuous 50 feet road from the East to the West of the A.P. Housing Board Colony, Proddatur as in the earlier lay out the said road was not continuous and was interrupted by open spaces in the middle of the colony. It is stated that even this second lay out was again revised and third and final lay out was prepared and approved by the Director of Town and Country Planning, Hyderabad vide L.P. No. 1/2000 and this lay out plan is being strictly followed by the respondent-Board.

The affidavit further says that as per Rule 10(1) of A.P. Municipalities (Lay Out Rules), 1970, the maximum area to be left out for open spaces should be 10% and, in the final lay out plan, out of 56.16 acres, an area of 5.62 acres was earmarked for open spaces, which is exactly 10%. In addition to that, an area of 15.75 Acres is ear-marked for roads, which works out to 28%. The remaining area is ear-marked for 719 plots of various categories. Respondents have denied that the members of the petitioner-Association purchased the plots after looking at the approved plan of the year 1981. It is stated that the said plan was not at all approved. The members of the petitioner-Association were well aware of the lay out Plan No. 1/2000. It is also stated that as per the provisions of Section 36 of the A.P. Housing Board Act, 1956 after completion of the housing project, the colony will be handed over by the A.P. Housing Board to the Municipality/Local Authority along with the open areas as earmarked in the lay out plan and such open areas will thus vest in Municipality/local authority and will be developed by the Municipality/Local Authority and the petitioner association has no authority to develop the open spaces without the permission of the Municipality/Local Authority. The respondent specifically

denied that in the auction notice no area reserved as open space was sought to be sold and only those areas which are not plotted are being sold by public auction.

In view of what has been stated in the affidavit in reply and in view of the fact that petitioner association has not at all questioned the legality and validity of the final lay out plan, which had been approved strictly in accordance with law, there is hardly any force in the writ petition.

Learned counsel for the petitioner has correctly placed reliance upon the decision of the Supreme Court in BANGALORE MEDICAL TRUST case cited supra. Even on the basis of the said decision of the Supreme Court, the action of respondents cannot be faulted with inasmuch as respondents have revised the lay out plan strictly in accordance with law, which action of the respondents is not under challenge in the writ petition.

The writ petition is accordingly dismissed. No costs.

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DEVINDER GUPTA,CJ

Dated:15-03-2005

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B.SESHASAYANA REDDY,J

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